UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re UPLAND PARTNERS, a Hawaii limited partnership, Debtor.	Case No. 97-03746 Chapter 11 Re: Docket No. 3106, 3108

MEMORANDUM DECISION ON MOTIONS TO AMEND OR VACATE JUDGMENT ALLOWING CERTAIN CLAIMS

William S. Ellis, Jr., and P.F. Three Partners have each filed motions asking the court to set aside or amend the judgment entered on January 5, 2005, which overrules their objections to certain claims. Both motions should be denied.

The motions make three points, all of which are procedural. None of these points has merit.

I.

Mr. Ellis and P.F. Three Partners contend that the court should have held an evidentiary hearing before ruling on the objections. They point to the fact that the court held an evidentiary hearing before sustaining objections to administrative claims filed by P.F. Three Partners and contend that these claimants should have received the same treatment. I take this opportunity to expand on the oral explanation for the procedure adopted to address the objections.

The preliminary hearing on the objection to the claims was held on July 12, 2004. At the hearing, the parties presented oral argument in accordance with LBR 3007-1.[1] Mr. Ellis and P.F. Three Partners argued that the claims should be disallowed or, if not, that an evidentiary hearing should be held. Based on the argument and the written record, I sustained the objection to one claim, overruled the objection to another claim, and established a procedure for further consideration of the remaining claims. I instructed Mr. Ellis and P.F. Three Partners to file, by September 17, 2004,[2] declarations containing all of the evidence and authenticating all of the exhibits which they would offer if an evidentiary hearing were held, and memoranda explaining why the claims were not timely and valid in light of a letter agreement dated March 17, 1993. I advised the parties that I would review those submissions and decide what further proceedings, if any, were appropriate. I assured the claimants that I would not sustain the objection without giving the claimants an opportunity to respond to the objector's submissions. I reviewed the submissions, concluded that there were no genuine

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[1]Mr. Ellis and P.F. Three Partners state that I did not allow argument at the July 12 hearing on the legal issues. This is incorrect. The parties argued the matter for about thirty minutes. I reminded the parties that I had carefully read their written arguments and discouraged them from repeating the points already made in writing, but I imposed no other limitation on the hearing.

[2]The filing date was set relatively late, and was later extended to September 30, 2004, in order to accommodate Mr. Ellis and P.F. Three Partners.

issues of material fact requiring an evidentiary hearing, and overruled the objections.

The procedure was tailored to suit the unusual circumstances of this case. As I have repeatedly observed, this should have been a relatively straightforward chapter 11 case. Instead, the case has become one of the longest-running and most litigious cases ever filed in this district. The extraordinary delay and enormous expense are almost entirely attributable to the conduct of Mr. Ellis and those associated with him, including P.F. Three Partners. See Findings of Fact and Conclusions of Law Regarding Payment of Fees to Trustee and His Counsel Under 11 U.S.C. § 506(c), entered on February 11, 2003 (docket no. 2395). The consistency of Mr. Ellis' conduct makes it clear that he has intentionally set out to make this litigation so burdensome that others will be discouraged from asserting their rights and claims.

The procedure I adopted was intended to reduce Mr. Ellis' ability to impose unnecessary expense and burden on the claimants. Before I required the claimants to incur the expense and burden of preparing for an evidentiary hearing, I thought it appropriate to review the evidence which the objectors intended to present, in order to determine if the evidentiary hearing would serve a purpose. I concluded that the evidence which the objectors intended to present was

insufficient to support a defense to the claims, and therefore I overruled the objection without conducting the evidentiary hearing.

The procedure is similar to the well-established procedure adopted by many bankruptcy courts pursuant to which all direct testimony at trial must be provided in written form, rather than orally. In re Gergely, 110 F.3d 1448, 1452 (9th Cir. 1997). The procedure is also analogous to the summary judgment procedure, where parties submit written evidence and the court determines whether a trial is needed to decide genuine issues of material fact. If the evidence presented in opposition to the motion is so weak that the court would grant a motion for judgment as a matter at law at trial, then the court should enter summary judgment and spare the parties the needless cost of trial and trial preparation. Anderson v. Liberty Lobby, 477 U.S. 242 (1986).

II.

Second, Mr. Ellis and P.F. Three Partners contend that I improperly shifted the burden of proof from the claimants to the objectors. They are wrong.

Properly filed proofs of claim are presumptively valid. 11 U.S.C. § 502(a) ("A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects."); Fed. R. Bankr. P. 3001(f) ("A proof of claim executed and filed in accordance with these rules shall

constitute prima facie evidence of the validity and amount of the claim.") With one exception, P.F. Three Partners' objection did not challenge the claimants' compliance with the requirements for filing a proof of claim. The only exception is claim no. 37 filed by Hugh Menefee Development Corp.; P.F. Three Partners contended that its claim lacked adequate supporting documentation. This objection is specious. Claim no. 37 amends claim no. 7, which in turn amends claim no. 2. Claim no. 2 includes copious supporting documentation. The claimant's failure to attach duplicate copies of supporting documents to an amended claim should not invalidate the claim or deprive it of the presumption of validity.

In order to overcome the presumption of validity, an objector must offer evidence "sufficient to demonstrate a true dispute and [having] probative force equal to the contents of the claim." 9 Collier on Bankruptcy ¶ 3001.09[2] (15th rev. ed. 2004). If the objector meets this burden, then "the burden of proof will fall on whichever party would bear that burden outside of bankruptcy." Id.

The objectors had an opportunity to meet their burden of demonstrating a "true dispute" with evidence "having probative force equal to the contents of the claim." The evidence which they offered, in the form of written declarations and exhibits, was not sufficient to establish a defense to the claim. Therefore, the burden never shifted back to the claimants.

III.

P.F. Three Partners objects that the memorandum decision is an "adversarial response" to the objectors' submission that "judicially raises issues of fact and law not previously presented by claimants in their defense and therefore not addressed by [the objectors]." The decision provides my analysis of the objectors' arguments. The objectors fail to identify any of the "issues of fact and law" which the objectors supposedly did not address. It is true, but irrelevant, that I did not require the claimants to respond to those arguments. The Bankruptcy Code specifically confirms the court's power to act without waiting for a party's prompting:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. 105(a). The procedure adopted to address the objections was intended to limit the objectors' ability to abuse the processes of this court.

More fundamentally, the objectors' argument misunderstands the purpose of the adversary system. The objectors seem to think that a judge may rely only on the arguments made by the parties and may not use the judge's own

independent reasoning and analysis. Legal disputes are not like sporting events, where the outcome depends on the performance of the contestants. Judges are not like sports referees, whose only job is to see that the contestants play by the rules and to keep score. Judges are not supposed to decide cases based strictly on the parties' performance during the contest. Instead, judges are supposed to decide cases correctly. The parties' arguments are meant to help the court reach the correct result. The court should seek the correct result even if neither party argued for that result.

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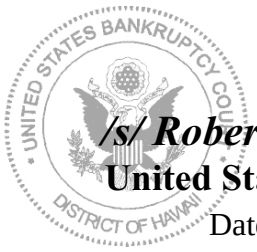
An appropriate order will be entered denying both motions.



/s/ Robert J. Faris
United States Bankruptcy Judge
Dated: February 01, 2005